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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,823	12/29/2003	Anthony Joseph Lavery JR.	UV-303	7175

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,823

Applicant(s)

LAVERY, ANTHONY JOSEPH

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003 and 09 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 and 23-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This Office action is in response to the application filed December 29, 2003 and the election filed November 9, 2006.

Election/Restriction

Applicant's election with traverse of Group II, i.e., claims 15-22, in the reply filed on November 9, 2006 is acknowledged. The traversal is on the ground(s) that "the inventions of Groups II and III are not distinct subcombinations for at least the reason that the inventions overlap in scope". This is not found persuasive because of the following reasons. As evidenced in the restriction requirement (of October 11, 2006), the claims of Group II are classified in 211/59.2 whereas the claims of Group III are classified in 211/59.3. This is important because the claims of Group III contain a spring which is a patentably distinct feature not found in the claims of Group II. This feature requires a search different than the search required for Group II. *Accordingly*, although applicant argues that the "all of the features can be included in a single apparatus (and)... that inventions of Groups II and III overlap in scope" the inventions in fact do not overlap in scope, for the reason of a different classification (as advanced above).

Thus, the requirement is still deemed proper and is therefore made FINAL.

Claims 1-14 and 23-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim.

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Abstract

Applicant is reminded of the proper language and format for an abstract of the disclosure. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The present invention relates to providing improved" in lines 1-2.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15-18 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent Application Publication No. 2004/0065631 (Nagel '631). It is noted in the following rejection, element 20 is the back plate and element 21 is the support plate.

Nagel '631 discloses an apparatus for displaying merchandise comprising a rack (see Figure 3), a self-advancing back plate (20) within the rack that is resiliently biased to press the merchandise towards the front of the rack (left side of Figure 3), an energy storage device (29) that provides the resilient bias to the back plate; *with respect to claim 16*, the energy device defines a spring; *with respect to claim 17*, the energy device is two devices configured in parallel (see Figure 9); *with respect to claim 18*, a support plate (21) engages (at 22 - see Figure 3) a rear of the back plate (20).

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Claims 15-18, 21, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0065631 (Nagel '631). It is noted in the following rejection, element 21 is the back plate and element 20 is the support plate.

Nagel '631 discloses an apparatus for displaying merchandise comprising a rack (see Figure 3), a self-advancing back plate (21) within the rack that is resiliently biased to press the merchandise towards the front of the rack (left side of Figure 3), an energy storage device (29) that provides the resilient bias to the back plate; *with respect to claim 16*, the energy device defines a spring; *with respect to claim 17*, the energy device is two devices configured in parallel (see Figure 9); *with respect to claim 18*, a support plate (20) engages (at 22 - see Figure 3) a rear of the back plate (21); *with respect to claim 21*, the support plate (20) is provided with slots (27, 28 - see Figure 5) to allow an extended spring to pass therethrough.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel '631 as applied to claims 15-18 and 22 above, and further in view of U.S. Patent No. 4,836,390 (Polvere '390).

Nagel '631 discloses the apparatus as advanced above and *with respect to claim 20*, the back plate (20) is provided with slots (27, 28 - see Figure 5).

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The claims differ from Nagel '631 in requiring the back plate to move on a ramp (claim 19) and whereby the ramp is enclosed (claim 20).

Polvere '390 teaches an apparatus comprising a rack with back plate (26) that has an energy device (34) and a ramp (see Figure 4) that is enclosed in the back plate.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the apparatus of Nagel '631 with a ramp, for increased ease in use since heavier objects could be advanced down the ramp by their weight.

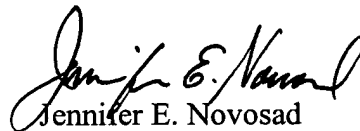
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday, Tuesday, Thursday, 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

December 4, 2006